

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

LETTERS PATENT APPEAL No 89 of 1995

in

SPECIAL CIVIL APPLICATION No 2234 of 1993

For Approval and Signature:

Hon'ble MR.JUSTICE C.K.THAKKER and

MR.JUSTICE S.D.PANDIT

- =====
1. Whether Reporters of Local Papers may be allowed to see the judgements?
 2. To be referred to the Reporter or not?
 3. Whether Their Lordships wish to see the fair copy of the judgement?
 4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the Civil Judge?

DISTRICT PANCHAYAT KHEDA AND ANR.

Versus

MANEKBEN GIRDHARBHAI SWEEPER

Appearance:

MR RA MISHRA for Petitioners
MR RAVI R TRIPATHI for Respondent No. 1
SERVED for Respondent No. 2

CORAM : MR.JUSTICE C.K.THAKKER and
MR.JUSTICE S.D.PANDIT
Date of decision: 01/07/96

ORAL JUDGEMENT(Per:Thakker-J)

Appeal is admitted.

Mr.D.P. Vora learned counsel for the respondent no.2 waives service of notice of admission.

This is an appeal against the interim order passed by the learned Single Judge in Special Civil Application No.2234 of 1993 on October 19,1994. Said order reads as under:

"Leave to amend.

Heard ld. advocates with regard to interim relief. Having regard to the facts and circumstances of the case, by way of interim relief the respondents are directed to pay the petitioner pensionary benefits on the basis that the petitioner was regular employee of the respondent no.2 since May 25,1970."

It is the case of the petitioner that though she was entitled to all the benefits as a permanent employee including pension, those benefits have not been extended to her. The learned Judge was pleased to admit the matter by issuing Rule and by way of interim relief passed the above order. It is that order which is challenged in the present appeal by the District Panchayat. We have heard Mr. R.A.Mistra learned counsel for the appellant-Panchayat and Mr. D.P.Vora learned counsel for the respondent-petitioner. No body appears on behalf of respondent no.2. In our opinion, in the facts of the case, interim relief of a mandatory nature which has been granted by the learned Single Judge ought not to have been granted. The case of the petitioner is that she was a permanent employee and to that effect an order was passed by the District Development Officer of the appellant Panchayat .This assertion was strongly contested by the respondents. An affidavit in reply is filed wherein it was contended that various documents relied upon by the petitioner were not genuine.

2. In our opinion, it would not be proper for us to express any opinion on that point for more than one reason. But in view of the fact that the basis or foundation of getting pensionary benefits is disputed, the learned Single Judge ought not to have granted mandatory relief at interim stage by directing the authorities to treat the petitioner as full time employee and to pay him pensionary benefits on that basis. It is the case of the District Panchayat that petitioner was a

part time sweeper and under the provisions of Gujarat Panchayat Service (Absorption, Seniority, Pay and Allowance) Rules 1965, she could not have been made permanent.

3. In our opinion, in the facts and circumstances an order of a mandatory nature passed by the learned Single Judge directing the District Panchayat to extend pensionary benefits to the petitioner at this stage requires to be set aside and is hereby set aside. Since the matter pertains to pensionary benefits , the petitioner or her counsel is at liberty to request the learned Single Judge so that the matter can be finally disposed of as expeditiously as possible. We are sure that as an when such a prayer is made, the learned Single Judge will consider the same and pass appropriate order. We may also clarify that whatever observations made by us hereinabove have been made only for the purpose of disposing of this appeal and the same will have no bearing on the final outcome of the Special Civil Application. The learned Single Judge will decide the same in accordance with law and on its own merits.

3. The appeal is accordingly partly allowed but with no order as to costs.

(C.K.Thakker)

(S.D.Pandit.J)